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NO. 83-240

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

LAWRENCE COUNTY AND THE LAWRENCE COUNTY COMMISSIONERS,

Appellants,

v.

LEAD-DEADWOOD SCHOOL DISTRICT NO. 40-1,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF SOUTH DAKOTA

BRIEF OF THE STATE OF SOUTH DAKOTA AS AMICUS CURIAE IN SUPPORT OF THE APPELLEE

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INTEREST OF THE STATE OF SOUTH DAKOTA

Defense of a statute enacted by the Legislature of the State of South Dakota, which furthers the fiscal integrity of the State of South Dakota and its subdivisions, is of great interest to the State of South Dakota. The great interest of the State of

South Dakota in this matter is based, in part, upon the Appellants' expansive interpretion of the federal Payment in Lieu of Taxes Act, 31 U.S.C. §§ 6901 et seq. This interpretation not only interferes with the internal fiscal affairs of the State of South Dakota, but also challenges the authority of the State of South Dakota to guide the fiscal affairs of its counties, which are statutorily created units of local government within the State of South Dakota.

The meaning of the federal statute, which directs the point of distribution of federal funds, and the state statute, which sets out the method of distributing such funds, are clear on their face. For that reason, it is the duty and obligation of the State of South Dakota to defend the validity of its statute against the unsupportable claim of state law interference made by the Appellants and their amici curiae.

Although this case is nothing more than a matter of statutory construction, the Appellants and their amici curiae, especially the United States, have made it a cause celebre. According to the Appellants and their amici curiae, the South Dakota statute in question is an attempt by the State of South Dakota to inhibit the flow of federal dollars made available to local governments through the provisions of 31 U.S.C. §§ 6901 et seq. The State of South Dakota therefore has a great interest in seeing not only that this matter is viewed in its proper perspective, but also that the state statute in question is found to be a valid method by the State of South Dakota to guide and manage its internal fiscal affairs.

ARGUMENTS AND AUTHORITIES

THE SOUTH DAKOTA SUPREME COURT'S DETERMINATION THAT SDCL 5-11-6 DOES NOT INTERFERE WITH THE PROVISIONS OF THE FEDERAL PAYMENTS IN LIEU OF TAXES ACT, 31 U.S.C. §§ 6901 ET SEQ., IS CORRECT.

This Court has stated that conflicts between federal and state laws which deal with the same subject matter should not be sought where no conflict exists. Exxon Corp. v. Governor of Maryland, 437 U.S. 117 (1978). No conflict exists between the federal and state laws dealing with federal payments in lieu of taxes. The federal statute simply sets the county as the point of distribution of the funds. It does not limit, as do some federal statutes, such as the National Forest Management Act, 16 U.S.C. §§ 500 et seq., the purposes for which the federal money may be used. The money can be used "for any governmental purpose." 31 U.S.C. § 6902(a). The state statute, on the other hand, sets guidelines for the distribution of these federal funds by the county. The state statute does not in any way limit the uses of the money; it simply treats the federal payments made in

lieu of taxes the same as other types of tax revenue. SDCL 5-11-6. See also, Lead-Deadwood School District v. Lawrence County, 334 N.W.2d 24, 25-26 (1983).

Although the State is in agreement with the argument in this regard made by the Lead-Deadwood School District in its brief, some points raised by the Appellants and their amici curiae, especially those arguments dealing with the legislative history of the federal statute and the previous court decisions dealing with the federal law in question, must be considered.

A review of the House and Senate reports accompanying the federal Payments in Lieu of Taxes Act out of committee makes it clear that the overriding concern of Congress in enacting this legislation was not how the money was to be used, except that the Act did allow the money to be used "for any governmental purpose." This is different than some

federal grants, which limit the funds' use to one or two certain subjects. The main concern of Congress, instead, was that the money be distributed directly to the counties, rather than to the individual states. See, S.Rep. 1262, 94th Cong., 2d Sess. 15 (1976); H.R. Rep. 1106, 94th Cong., 2d Sess. 11-12 (1976).

Throughout this entire action, beginning with the action in the United States District Court, neither the School District nor the State of South Dakota has argued that it is not appropriate for Lawrence County to be the initial recipient of these funds. Thus, the Senate and House reports are not particularly useful in resolving the question presented in this case that deals with the intent of Congress when it used the phrase "for any governmental purpose" in section one of the Act.

Further, there is no question that these funds can be used for any governmental purpose, rather than for a single, specific purpose. Therefore, the holdings in Kendall v. Towns County, 146 Ga. App. 760, 247 S.E.2d 577 (1978), and Meade Township v. Andrus, 695 F.2d 1006 (6th Cir. 1982), are of little value in the consideration of the present issue. Likewise, Altus-Denning School District v. Franklin County, 568 F.Supp. 95 (W.D. Ark. 1983), is of limited value in this appeal. The Arkansas statute in question in Altus-Denning, unlike SDCL 5-11-6, required the federal funds to be used for school purposes only.

Because of the lack of guidance found in these materials, the plain meaning of the words of the statutes must be analyzed. The words in these statutes do not conflict.

The funds received by the counties under the provisions of 31 U.S.C. §§ 6901 et seq., in essence, are tax revenues allocated to the county for its distribution. The underlying premise in the arguments made by the Appellants and their amici curiae is that the State of South Dakota has no authority to establish in statutory form, guidelines to the counties for distribution of this type of tax money. This premise, however, is contrary to the concept of federalism and the power of the states found in the Tenth Amendment to the Constitution of the United States.

Counties are a creature of the State of South Dakota. The relationship between the State of South Dakota and its counties is set by both the state constitution and state statutes. Article IX, § 1 of the South Dakota Constitution states, in part, that "the Legislature shall have plenary powers to

organize and classify units of local government. . . ." In Title 7 of the South Dakota Codified Laws, the state legislature has not only set the county boundaries and established county officers and their duties, but has also set a wide range of laws governing general county government. Among these laws are laws dealing with county budgets and appropriations by the counties. SDCL 7-21.

Further, a county's taxing authority comes directly from the State of South Dakota. For, in addition to creating counties and their governments, the state legislature established statutory guidelines for county property tax levies. SDCL 10-12. As political subdivisions of the state, counties are clearly subject to guidance by the state in the management of their fiscal affairs. It cannot be argued that SDCL 5-11-6 is anything more than statutory guidance to the counties. Because of the

relationship between the State of South Dakota and its counties, SDCL 5-11-6 is simply a statutory guide to the management of the state's internal fiscal affairs.

The arguments by the Appellants and their amici curiae ignore this relationship. They argue, instead, that the federal statutes in question create a method of funding that is beyond the reach of the State. This argument not only ignores the role of the county within the government of the State of South Dakota, but it also ignores the powers reserved to the state, especially those powers dealing with the internal fiscal management of the State.

The Appellants and their amici curiae also argue that the money is to be delivered to the counties and distributed by them at their absolute discretion. This argument fails to take into account the fact that in

South Dakota the disbursement of funds by a county is guided by state statute. SDCL 5-11-6 provides such guidance. The claim of complete discretion found in the briefs of the Appellant and their amici curiae attempts to alter the relationship between the State of South Dakota and its counties. Federal statute cannot make such alterations. Furthermore, the plain language of this particular federal statute does not purport to make such an alteration.

Recent decisions of this Court support the right of the State of South Dakota to enact statutes, such as SDCL 5-11-6, which deal with the distribution of federal money paid to the counties in lieu of taxes. In Silkwood v. Kerr-McGee Corp., ___ U.S. ___, 104 S.Ct. 615, 621 (1984), this Court noted (citations omitted):

> [S]tate law is . . . preempted to the extent it actually conflicts with federal law, that is, when it

> is impossible to comply with both state and federal law, or where the state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress.

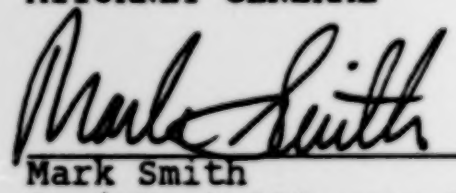
See also, Pacific Gas and Electric Company v. State Energy Resources Conservation and Development Commission, ___ U.S. ___, 103 S.Ct. 1713 (1983). Therefore, unless there is an overwhelming and insurmountable conflict between the federal and state laws, the state law is valid. State regulation in areas dealt with by federal legislation and regulation is not absolutely prohibited. Hancock v. Train, 426 U.S. 167 (1976). Because SDCL 5-11-6 does not conflict with the purpose or intent of 31 U.S.C. §§ 6901 et seq., the decision by the South Dakota Supreme Court, which concluded that there is no conflict between the statutes and that the state law is valid, is correct.

CONCLUSION

Based upon the foregoing arguments and authorities, the judgment of the South Dakota Supreme Court should be affirmed.

Respectfully submitted,

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